TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 265.

THOMAS DOLAN, APPELLANT,

vs.

ABRAHAM G. JENNINGS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 20, 1887.

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1 [L. S.] The President of the United States of America to Thomas Dolan, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of December, A. D. 1881, wherever the said court shall then be, to answer a bill of complaint exhibited against you in said court by Abraham G. Jennings and Warren P. Jennings, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the ninth day of November, in the year one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and sixth.

JOSEPH M. DEUEL, *Clerk.*

BRIESEN & BETTS,
Complainants' Sol'rs.

The defendant is required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of December, 1881, or the bill will be taken *pro confesso* against him.

J. M. D., *Clerk.*

2 (Endorsed:) I hereby certify that on the 9th day of November, 1881, at the city of New York, in my district, I personally served the within subpœna upon the within-named Thomas Dolan by exhibiting to him the within original and at the same time leaving with him a copy thereof. Dated July 3rd, 1882. (S'g'd) Henry E. Knox, U. S. marshal, S. D. N. Y. (File-mark:) U. S. circuit court. Filed July 3, 1882. Joseph M. Deuel, clerk.

3 Circuit Court of the United States for the Southern District of New York.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS *vs.* THOMAS DOLAN. } In Equity. No. 2.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

Abraham G. Jennings and Warren P. Jennings, doing business at the city of New York, county and State of New York, and citizens of the State of New York, bring this their bill of complaint against Thomas Dolan, doing business in the city of Philadelphia, county of Philadelphia, and who is, as your orators are informed and believe, a citizen of the United States, and thereupon your orators complain and say—

4 That your orators, Abraham G. Jennings and Warren P. Jennings, were and are the original and first inventors of a new and improved lace purling, fully described in the letters pat-

ent hereinafter mentioned, and which had not been known or used before said Abraham G. Jennings' and Warren P. Jennings' said invention, and which was not for more than two years before their application for a patent, as hereinafter mentioned, in public use or on sale with their consent or allowance.

And your orators, on information and belief, further show unto your honors that said Abraham G. Jennings and Warren P. Jennings, being so as aforesaid the first inventors and discoverers of said improvement in lace purling, did, on the 29th day of July, 1879, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 218,032, whereby there was granted and secured to said Abraham G. Jennings and Warren P. Jennings, their heirs, administrators, or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and improvement as set forth in said letters patent, which, or a duly certified copy of which, is ready here in court to be produced; and by virtue whereof said Abraham G. Jennings and Warren P. Jennings became and now are the sole owners of all the rights and privileges granted and secured or intended to be granted and secured in and by said letters patent.

And your orators further show unto your honors that Warren P. Jennings, one of your orators, was and is the original and first inventor and producer of a new and original design for fringed lace fabric, fully described in the letters patent hereinafter mentioned, and which had not been known or used before said Warren P. Jennings'-said invention and production, and which was not for more than two years before his application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allowance, and which he, said Warren P. Jennings, had invented and produced by his own industry, genius, efforts, and expenses.

And your orators further show unto your honors (your orator Abraham G. Jennings on information and belief) that said Warren P. Jennings, being so as aforesaid the first inventor and producer of said new and original design for fringed lace fabric, did, on the 12th day of February, 1878, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid and numbered 10448, whereby there was granted and secured to said Warren P. Jennings, his heirs, administrators, or assigns, or intended so to be, for the term of seven years from and after the date of said letters patent the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and design, as set forth in said

letters patent, which, or a duly certified copy of which, is ready here in court to be produced; and by virtue whereof said Warren P. Jennings became and was the sole owner of all the rights and privileges granted and secured or intended to be granted and secured in and by said letters patent.

And your orators further show unto your honors that afterwards, to wit, on or about the 20th day of February, 1878, the said Warren P. Jennings, by an instrument in writing of that date, sold, assigned, and transferred unto your orators all his right, title, and interest in and to said invention and the letters patent No. 10448 therefor granted as aforesaid, which said instrument in writing was duly recorded in the Patent Office of the United States, as by said instrument in writing or a duly authenticated copy thereof and the certificate of such recording thereto affixed, ready in court to be produced, will fully and at large appear.

And your orators further show unto your honors that by virtue of the premises your orators became and now are the sole and exclusive owners of said several letters patent and the inventions
6 and improvements and designs described therein and of all the rights and privileges granted and secured or intended to be granted and secured thereby; and that since they became the owners thereof as aforesaid your orators have invested and expended large sums of money and have been to great trouble in and about said invention and design and for the purpose of carrying on the business of manufacturing and selling lace purling and fringed lace fabrics and making the same profitable to themselves and useful to the public, and that said invention and design have been and are of great benefit and advantage, and that large quantities of said lace purling and fringed lace fabrics were made according to said invention and design and sold by your orators to the great advantage of the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orators, and your orators believe that they will realize and receive large gains and profits therefrom if infringements by said defendant and their confederates shall be prevented.

Yet the said defendant, well knowing the premises and rights secured to your orators as aforesaid, but contriving to injure your orators and to deprive them of the benefits and advantages which might and otherwise would accrue unto your orators from said invention and design ever after the issuing of the said letters patent as aforesaid and before the commencement of this suit, did, as your orators are informed and believe, without the license or allowance and against the will of your orators and in violation of your orators' rights and in infringement of the aforesaid several letters patent, at the city of New York and other places, unlawfully and wrongfully and in defiance of the rights of your orators, make, construct, use, and vend to others to be used the said invention and design and did make, construct, use, and vend to others to be used lace fabrics, each made according to and employing and containing the inventions described and claimed in both said patents, and your orators charge it to be a fact that said defendant and his confeder-

ates shall continue so to do, and that they are threatening to make the aforesaid lace fabrics in large quantities and to supply the market therewith and to sell the same.

7 And your orators further show unto your honors that on the 4th day of October, 1879, your orators filed their bill of complaint in the circuit court of the United States for the district of Massachusetts against John E. Hodgkins and H. W. Beal, doing business as Hodgkins & Co.; that in their said bill they complained of the infringement by said defendants of design patent No. 10448, being the same design letters patent on which this present suit is brought, and prayed for an injunction and accounting against said defendants; that said defendants filed their answer to said bill on the 1st December, 1879, denying, amongst other things, the validity of said letters patent and that the complainants had any rights under the same, and setting up the non-patentability, prior knowledge, and public use of the things patented in said letters patent; that your orators, on the 29th day of December, 1879, filed their replication to such answer, and that thereafter proofs were taken in said suit at length; that after due proceedings had said suit was reached for final hearing, and that upon due consideration thereof, and after hearing arguments of counsel, the court directed a decree to be entered sustaining the validity of said letters patent and the rights of your orators under the same and for an account and perpetual injunction against said defendants, and that the said decree was duly entered and the perpetual injunctions were duly issued and served on said defendants, and that the accounting under said decree was duly proceeded with and heavy damages awarded to your orators by the master and judgment entered therefor.

And your orators further show unto your honors that on the 3d day of October, 1879, your orators filed their bill of complaint in this court against James H. Sayre, Joseph W. North, and James E. Hedges, doing business as Sayre & North.

That in their said bill they complained of the infringement by said defendants of the aforesaid design letters patent No. 10448, and prayed for an injunction and account.

That said defendants duly appeared, and that thereafter, by advice of counsel, and after having examined into the validity of said patent, they acknowledged in writing the validity of said patent and

8 the rights of your orators under the same, and that such acknowledgment has been filed in the clerk's office of this court, and that said defendants have since dealt in goods which are duly licensed by your orators under said letters patent.

And your orators further show unto your honors that on the 12th day of February, 1881, your orators filed their bill of complaint in this court against Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, composing the firm of Kibbe, Chaffee, Shreve & Co., of New York city; that in their said bill they allege infringement by said defendants of the aforesaid design letters patent No. 10448 and of another patent, and prayed for an injunction and account.

That defendants appeared by counsel, and that thereafter a motion for a preliminary injunction to restrain said defendants, as prayed in the bill of complaint, was brought to a hearing upon the affidavits and papers filed on the part of complainants and defendants, and that after argument by counsel and full consideration said motion was granted by Hon. Samuel Blatchford, circuit judge, and to the original order for said injunction and the writ of injunction on file in this court and ready to be produced your orators crave leave to refer.

And your orators further show unto your honors that on the 27th day of April, 1881, your orators filed their bill of complaint in this court against Thomas Dolan, the defendant herein.

That in their said bill they alleged infringement by said defendant of the aforesaid design letters patent No. 10448 and of another patent, and prayed for an injunction and account.

That defendant appeared by counsel, and that thereafter a motion for a preliminary injunction to restrain said defendant, as prayed in the bill of complaint, was brought to a hearing upon the affidavits and papers filed on the part of complainants and defendant, and that after argument by counsel and full consideration said motion was granted by Hon. Samuel Blatchford, circuit judge, and to the original order for said injunction and the writ of injunction
9 on file in this court and ready to be produced your orators crave leave to refer.

And your orators further say unto your honors that the manufacture and sale by said defendant of lace fabrics made in violation of said letters patent Nos. 10448 and 218,032 is in defiance of the rights acquired by and secured to your orators as aforesaid and to your orators' great and irreparable loss and injury, and by which your orators have been and still are being deprived of great gains and profits which they might and otherwise would have obtained, but which have been received and enjoyed and are being received and enjoyed by the said defendant by and through his aforesaid unlawful acts and doings.

And your orators further show unto your honors, on information and belief, that said defendant has made and sold and caused to be made and sold large quantities of said lace fabrics, and have a large quantity on hand which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orators do not know and pray a discovery thereof; and your orators say that the use of the said invention by said defendant and his preparation for and avowed determination to continue the same and his other aforesaid unlawful acts, in disregard and defiance of the rights of your orators, have the effect to and do encourage and induce others to venture to infringe said patent, in disregard of your orators' rights.

And your orators pray that said defendant, Thomas Dolan, and his and each of his servants, agents, attorneys, and workmen and each and every of them may be restrained and enjoined provisionally and perpetually, by the order and injunction of this honorable court, from directly or indirectly making, constructing, using, vend-

ing, delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said invention or any part thereof or any lace fabrics described and claimed in said letters patent No. 218,032 or in both said letters patent Nos. 218,032 and 10448 or any lace fabric made in accordance therewith or like or similar to those which the said defendant has heretofore made; and that the said defendant may be decreed to pay the profits unlawfully obtained by him by reason of the aforesaid infringement and the damages thereby suffered by your orators and the costs of this suit; and that your orators may have such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

10

And forasmuch as your orators can have no adequate relief except in this court, to the end, therefore, that the said defendant may, if he can, show why your orators should not have the relief hereby prayed, and may, upon his corporal oath, according to his best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orators the profits by him acquired and the damages suffered by your orators from the aforesaid unlawful acts—

May it please your honors to grant unto your orators the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendant, Thomas Dolan, and his and each of his servants, agents, attorneys, and workmen and each and every of them as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orators the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendant, Thomas Dolan, commanding him, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide such order and decree as may be made against him.

11

And your orators will ever pray, &c.

ABRAHAM G. JENNINGS.

BRIESEN & BETTS,
Comp'ts' Sol'rs.
A. v. BRIESEN, *Of Counsel.*

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

On this 14th day of November, 1881, before me personally appeared Abraham G. Jennings, one of the above-named complainants, who, being by me first duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to

those matters he believes it to be true, and that he verily believes said Abraham G. Jennings and Warren P. Jennings to be respectively the first and sole inventors and producers of the new and improved lace purling and design for fringed lace fabrics described and claimed in the said several letters patents referred to in said bill of complaint.

ABRAHAM G. JENNINGS.

Subscribed and sworn to before me this 14th day of November, A. D. 1881.

[SEAL.] THOMAS ALEXANDER, JR.,
Notary Public, N. Y. Co.

12 United States Circuit Court, Southern Dist. of N. Y. In In Equity.

A. G. JENNINGS *et al.*
vs.
THOMAS DOLAN.

Please enter our appearance for defendants in the above-entitled cause.

(S'g'd) GEORGE HARDING,
JOHN R. BENNETT,
Counsel for Def'ts.

To clerk U. S. circuit court.
Dated Dec. 5, '81.

(Endorsed:) Jennings *et al. vs.* Dolan. Appearance. (File-mark:) U. S. circuit court. Filed Dec. 5, 1881. Joseph M. Deuel, clerk.

13 U. S. Circuit Court, Southern District of New York.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
THOMAS DOLAN. } In Equity. No. 2196.

We hereby consent that Briesen & Steele be substituted as the solicitors for the complainants in the above-entitled case in our place and stead.

New York, 14th Feb'y, 1883.

(S'g'd) BRIESEN & BETTS,
Compl'ts' Solicitors.

(Endorsed:) U. S. circuit court, southern district of New York. A. G. Jennings *et al. vs.* Thomas Dolan. Consent and order of substitution. Briesen & Betts, compl'ts' sol'ors, 229 B'way, N. Y. (File-mark:) U. S. circuit court. Filed Feb. 15, 1883. Joseph M. Deuel, clerk.

14 United States Circuit Court, Southern District of New York.
In Equity.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
THOMAS DOLAN.

The Answer of Thomas Dolan, Defendant, to the Bill of Complaint of Abraham G. Jennings and Warren P. Jennings, Complainants.

To the honorable the judges of the circuit court of the United States in and for the southern district of New York:

This defendant, for answer to the said bill of complaint, and not waiving any objection thereto, says:

I.

He admits that letters patent of the United States 218,032, dated July 29th, 1879, for "improvement in lace purling" were granted to said Abraham G. Jennings and Warren P. Jennings, but denies that the said Abraham G. Jennings and Warren P. Jennings were
15 the original and first inventors of the said alleged "improvement in lace purling," shown, described, and claimed in the said letters patent, or that the same had been known or used by others before the date of the said alleged invention, or that the same had not prior to the date of their said alleged invention *or that the same had not prior to the date of their said alleged invention* or for more than two years before their application for letters patent therefor been in public use or on sale, or that by reason of the granting of the said letters patent the said Abraham G. Jennings and Warren P. Jennings became the sole owners of the said alleged "improvement in lace purling" therein shown, described, and claimed.

II.

He has no knowledge as to the alleged assignment of February 20th, 1878, from Warren P. Jennings to the complainants, — became and now are the sole and exclusive owners of the said letters patent above referred to, and leave complainants to make such proof thereof as they may deem necessary.

16 III.

He has no knowledge as to whether, by virtue of the said alleged assignments, the complainants became and are now the sole and exclusive owners of the said letters patent above referred to, and leave complainants to make such proof thereof as they may deem necessary.

IV.

He denies, upon information and belief, that the complainants have "invested and expended large sums of money and have been

to great trouble in and about said inventions and for the purpose of carrying on the business of manufacturing and selling lace fabrics which embody said improvement and design and making the same profitable to themselves and useful to the trade, and that said inventions have been and are of great benefit and advantage, and that large quantities of said lace fabric were made according to said inventions and sold by the complainants to the great advantage of the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of the complainants.

17

V.

He denies that he has in any manner or way whatsoever infringed the several letters patent No. 218,032 and No. 10448 or either of them, or that he intends or threatens so to do.

VI.

He denies that he has caused the complainants any loss or damage or injury whatsoever, or that the complainants have been deprived of any gains or profits which they might or otherwise would have obtained and been in the receipt and enjoyment of had it not been for his acts and doings.

VII.

He admits that the complainants filed a bill of complaint in the circuit court of the U. S. for the dist. of Mass. against John Hodgkins and H. W. Beal, doing business as Hodgkins & Beal, for alleged infringement of said letters patent No. 10448; that said defendant- appeared and filed answer thereto; that issue was joined and proofs taken in said cause on behalf of complainants, but he is informed
18 and believes that no proofs were taken by or on behalf of the said defendant-, nor was any defense whatsoever interposed by him or on his behalf, and that the decree entered by the court in said suit was — by reason of default on the part of the said defendant-.

VIII.

He has no knowledge of the suit of the complainants *vs.* Sayre and North or of the proceedings had therein, save as recited in the bill of complaint, and leaves complainants to make such proof thereof as they may be advised is necessary.

IX.

He charges, on information and belief, that the said letters patent 218,032, dated July 29th, 1879, are void, for that the alleged "improvement in lace purling" therein shown, described, and claimed, or every substantial and material part thereof claimed therein as new, was, prior to the date of the said alleged invention by the said

Abraham G. and Warren P. Jennings, known and used by the following-named persons at the following-named places, viz:

19 Thomas Dolan, of the city of Philadelphia, Pa., at his factory, in said city of Philadelphia.

Henry Colton, of the city of Philadelphia, at the factory of Messrs. Slocum, in the city of New York, N. Y., and elsewhere.

Henry O. Truitt and Cornelius Jackson, both of the city of Philadelphia, at the factory of Thomas Dolan, in said city of Philadelphia; and was, prior to the date of the said alleged invention by the said Abraham G. and Warren P. Jennings, described and shown in the following letters patent—*i. e.*, design patent # 10388, dated Jan'y 1st, 1878, to Abraham G. Jennings; design patent # 10488, dated Feb'y 12th, 1878, to Warren P. Jennings.

X.

He charges, on information and belief, that Abraham G. Jennings and Warren P. Jennings were not either in law or in fact joint inventors of the said alleged "improvement in lace purling" shown, described, and claimed in said letters patent # 218,032, and that by reason thereof said letters patent are void.

20 XI.

He charges, on information and belief, that in view of the state of the art at or prior to the date of the granting of said letters patent # 218,032 or the date of the said alleged invention it required no invention whatsoever to produce said alleged "improvement in lace purling," and that the same was not a patentable improvement within the meaning of the law, and that by reason thereof said letters patent No. 218,032 are void.

XII.

He charges, on information and belief, that the said letters patent # 10448 for "design for a fringed lace fabric" are void, for that the said design therein shown, described, and claimed was not new with the said Warren P. Jennings, but that the same was, prior to the date of the said alleged invention and production thereof by the said Jennings, known to and used by the following-named persons at the following-named places, viz:

Henry Colton, of Philadelphia, Pa., at the factory of Messrs. Slocum, in the city of New York, and elsewhere.

21 Henry Raab, deceased, late of Philadelphia, Pa., at the factory of Thomas Dolan, in said city of Philadelphia, and elsewhere.

Thomas Dolan, of the city of Philadelphia, Pa., at said city and elsewhere.

Henry A. Truitt, of Philadelphia, Pa., at said city and elsewhere.

Cornelius Jackson, of Philadelphia, Pa., at the factory of Thomas Dolan, in said city of Philadelphia.

William McDevitt, of Philadelphia, Pa., at the factory of Thomas Dolan, in said city of Philadelphia, and elsewhere.

Henry R. Kibbe, of Somers, Tolland county, State of Pa., at the city of Philadelphia, Pa., and elsewhere.

—— Dunnington, of Boston, Mass., at the city of Brooklyn, N. Y., and elsewhere.

Henry Crine, of Boston, at said Boston, Brooklyn, New York; New York city, and elsewhere.

XIII.

He charges, on information and belief, that the said letters patent # 10448 are void, for that the "design for a fringed lace fabric" shown, described, and claimed therein was not original with
22 the said Warren P. Jennings, nor did he invent or produce the same by his own industry, genius, efforts, and expense, but that the same was invented and produced by the industry, genius, efforts, and expense of —— Dunnington, now of Boston, Mass., then of Brooklyn, New York, who after inventing and producing the said designs for a fringed lace fabric exhibited and explained the same to the said Warren P. Jennings, who thereupon surreptitiously and unjustly obtained the said letters patent No. 10448 for that which had prior thereto been invented and produced by the industry, genius, efforts, and expense of the said Dunnington.

XIV.

He charges, on information and belief, that the said letters patent No. 10448 are void, for that the "design for a fringed lace fabric" shown, described, and claimed therein was not original with the said Warren P. Jennings, nor did he invent and produce the same by his own industry, genius, efforts, and expense, but that the same was invented and produced by the industry, genius, efforts
23 of Henry Boot, deceased, late of Philadelphia, Pa., then of Brooklyn, N. Y., who after inventing and producing said "design for a fringed lace fabric" exhibited and explained the same to the said Warren P. Jennings, who thereupon surreptitiously and unjustly obtained the said letters patent # 10448 for that which had prior thereto been invented and produced by the industry, genius, efforts, and expense of the said Boot.

XV.

He charges, on information and belief, that the said letters patent No. 10448 are void, for that the "design for a fringed lace fabric" shown, described, and claimed therein was not original with the said Warren P. Jennings, nor did he invent and produce the same by his own industry, genius, efforts, and expense, but that the same was invented and produced by the industry, genius, efforts, and expense of Henry Crine, of Boston, Mass., who after inventing and producing the said "design for a fringed lace fabric" exhibited and explained the same to the said Warren P. Jennings, who
24 thereupon surreptitiously and unjustly obtained the said letters patent # 10448 for that which had prior thereto been invented and produced by the industry, genius, efforts, and expense of said Crine.

plaint, the answer thereto of the defendant, the replication of the complainants to such answer and proofs taken on the part of the complainants and on the part of the defendant, and Mr. Arthur v. Briesen and Mr. Antonio Knauth having been heard on behalf of the complainants and Mr. John R. Bennett on behalf of the defendant—

Now, therefore, upon consideration thereof and on motion of Briesen & Steele, solicitors for the complainants and due deliberation had, it is hereby—

Ordered, adjudged, and decreed that the design letters patent of the United States issued to Warren P. Jennings on the 12th day of February, 1878, numbered 10448, for a fringe-lace fabric have not been infringed by the defendant herein, and that the letters patent of the United States issued to Abraham G. Jennings and Warren P. Jennings on the 29th day of July, 1879, numbered 218,032, for lace purling are good and valid in law, and that the complainants herein are entitled to the exclusive rights in, to, and under said letters patent and in and to the invention and improvements secured thereby, and that the title thereto is duly vested in the complainants, and that the defendant has infringed upon the said letters patent No. 218,032 and upon the exclusive rights of the complainants thereunder by making, using, and vending to others to be used lace fabrics made according to and employing and containing the invention and improvements described in said letters patent and claimed in the claims thereof.

And it is further ordered, adjudged, and decreed that the complainants do recover from the defendant, Thomas Dolan, the gains, profits, savings, and advantages which the said defendant has derived, received, or made by reason of the infringement of the complainants' exclusive rights under said letters patent No. 218,032 by any manufacture, use, or sale of lace fabrics containing the invention and improvements described in said letters patent and claimed in the claims thereof or any of them, and that the said complainants do also recover, in addition thereto, any and all damages which they have sustained by reason of such infringement of their exclusive rights by the said defendant; and it is hereby referred to Timothy Griffith, Esquire, as master, the parties hereto consenting in writing to his appointment because of the convenience of access to the records of the court and the exhibits on file herein, to ascertain, take, and state the number of lace fabrics made and the number used and the number sold by the defendant, Thomas Dolan, in infringement of the claims of said letters patent No. 218,032 or any of them and the number of such lace fabrics which the said defendant has on hand and the gains, profits, savings, and advantages derived by the said defendant from and through the said infringements, and to assess the damages thereby suffered by the said complainants and to report thereon to the court with all convenient speed; and the said defendant, Thomas Dolan, is hereby directed and required to attend before the said master from time to time, as required by said master, and to produce before him such books, papers, exhibits, statements, vouchers, and documents as he may be directed

by the said master to produce, and to submit to such oral or other examination as the master may direct.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued out of and under the seal of this court enjoining and restraining the defendant, Thomas Dolan, and his servants, agents, attorneys, and workmen from directly or indirectly making or causing to be made, delivering, vending, or causing to be sold, offering for sale, using or causing to be used in any manner any lace fabrics like or similar to those which the said defendant has heretofore made, used, or sold containing or embodying the invention and improvements described in said letters patent numbered
31 218,032 and claimed in the claims thereof or any of them, and from counterfeiting or imitating the said invention and improvements or any part or parts thereof in any way whatsoever.

And it is further ordered, adjudged, and decreed that the complainants do not recover from the defendant the costs of this suit up to the entry of this decree, and that the question of costs on the accounting and the question of increase of damages and all further questions be reserved until the coming in of the master's report.

HOYT H. WHEELER.

We hereby consent to the appointment of Timothy Griffith, Esq., as master herein, for the reasons set forth in the above decree.

Dated New York, Jan'y 19, 1885.

(S'g'd) BRIESEN & STEELE,
Compl'ts' Sol'rs.

(S'g'd) JOHN R. BENNETT.

32 [Endorsed:] No. 2196. Circuit court of the United States for the so. district of New York, in the second circuit. Abraham G. Jennings & *al. vs.* Thomas Dolan. In equity. Interlocutory decree. Briesen & Steele, solicitors for complainant, 229 Broadway, New York. (File-mark:) Filed in court Jan. 19, 1885.

33 United States Circuit Court, Southern District of New York.

A. G. and W. P. JENNINGS
vs.
THOMAS DOLAN. } In Equity.

Testimony Taken Before Timothy Griffith, Esq., as Master, Pursuant to an Order of Court Dated January 19th, 1885.

NEW YORK, *February 11th*, 1885—2 p. m.

Met pursuant to notice.

Present: Mr. A. v. Briesen, for compl'ts, and Mr. J. R. Bennett, for def't.

Counsel for compl'ts requests the master to make an order requiring the def't to produce a written statement showing the number of infringing articles sold, the time of sale, and to or through whom sold.

The master so orders.

34 (Adjourned.)

NEW YORK, *February 25th*, 1885.

Met pursuant to adjournment.

Present: Mr. Turk, for compl'ts, and Mr. John R. Bennett, for def'ts.

Def't's counsel produces the statement, in compliance with the order of the master of Feb'y 11th, 1885, and requests that the same be marked for identification.

The statement produced is so marked of this date.

Compl'ts' counsel objects to the statement produced on the ground that it is not in compliance with the order of Feb'y 11, 1885.

THOMAS DOLAN, being examined by compl'ts' counsel and duly sworn, deposes as follows:

Q. 1. Are you the def't in this suit?

35 A. Yes, sir.

Q. 2. Was the statement produced here to-day by you prepared by you?

A. No, sir; it was not. It was done in the usual course of business by one of my book-keepers under the supervision of my partner, Mr. Williams. My business is of such a magnitude that it would be impossible for me to enter personally into such details.

Q. 3. Then I understand it was not prepared under your personal supervision?

A. The magnitude of my business forbids giving my personal supervision to these details. It is a matter of record on my books, and is a mere matter of copying.

Q. 4. Will you please give us the name of the book-keeper who prepared this statement.

A. I do not know the name; I do not know which one did it.

Q. 5. Please tell us under whose supervision the statement

36 produced here to-day was made?

A. It was made under the supervision of my partner, Mr. Rynear Williams, who has charge of the clerical force of our establishment.

(S'g'd) THOMAS DOLAN.

Sworn before me this 25th day of February, 1885.

(S'g'd) TIMOTHY GRIFFITH, *Master*.

NEW YORK, *March 10th*, 1885—2 p. m.

Met pursuant to adjournment.

Present: Mr. A. v. Briesen, for compl't-; Mr. J. R. Bennett, for def'ts.

Counsel for complainants asks the master to order a statement to be produced by defendant, such as was ordered on February 11th, 1885.

The master so orders.

Def't's counsel agrees to furnish the statement.

37 NEW YORK, *April 7th*, 1885—2 p. m.

Met pursuant to adjournment.

Present: Mr. Turk for compl't- and Mr. Bennett for def'ts.

Def't's counsel produces, to be marked for identification, an itemized statement as called for and ordered by the master.

(Adjourned.)

NEW YORK, *May 14th*, 1885—2 p. m.

Met pursuant to adjournment.

Present: Counsel for the respective parties.

It is stipulated by and between counsel for the respective parties that testimony heretofore taken in the case against Kibbe, Chaffee, Shreve & Co., now pending before the same master, shall be regarded as also taken in this case.

38 NEW YORK, *Sept.* 29, 1885—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Mr. A. G. JENNINGS, being called and duly sworn, deposes as follows:

I am one of the complainants in this suit. I licensed others to make the patented lace purling which is described in the patent 218,032. The licenses were in writing. I produce one of them.

Witness produces a license dated August 24, 1880, between A. G. Jennings and W. P. Jennings, licensors, and Wm. Marriott and Henry Crine, licensees.

It is stipulated that a copy of the agreement may take the place of the original. Counsel for complainants offers the said agreement in evidence.

Marked Compl'ts' Exh. Agreement, of this date.

Witness continues:

The royalty of 50 cents per dozen nubias called for in the agreement with Marriott has been paid by him on each kind of nubias—double pillar and single pillar—made by him under that license. I also granted licenses to other persons under the patent in question—French & Ward, of Massachesetts; Conyers Button & Co., of Pa. They also paid me a royalty which was intended to average 50 cents per dozen nubias. They paid by the pound, they paid 10 cents per pound, and the nubias averaged from 3½ to 6 pounds in weight per dozen. I believe my royalty actually amounted to 50 cents per dozen nubias under these agreements.

A. G. JENNINGS.

39 Sworn to by consent before Mr. Sonneborn, notary public.

GEORGE H. SONNEBORN,
Notary Public, N. Y. Co.

Adjourned to October 8, 1885, at 1 p. m.

NEW YORK, *Nov.* 23, 1885—2 p. m.

Met pursuant to agreement.

Present: Counsel for the respective parties as before.

Defendants here open their proof.

It is agreed by and between counsel for the respective parties that the nubias accounted for by the defendants, Kibbe, Chaffee, Shreve & Co., were manufactured by Thomas Dolan and are contained in the statement produced on behalf of Mr. Dolan in the suit against him on the 7th of April, 1885.

Defendants' counsel offers in evidence a certified copy of the interlocutory decree entered in the case of these complainants *vs.* Thomas Dolan the 17th day of October, 1882.

Also a certified copy of the report of the master filed in the said cause January 19th, 1883.

Also a certified copy of the final decree entered in said cause April 17, 1883.

Also a certified copy of the interlocutory decree entered in the case of these complainants *vs.* Kibbe, Chaffee, Shreve & Co. the — day of February, 1882.

Also a certified copy of the report of the master filed in the said cause October 6, 1882.

Also a certified copy of the final decree entered in said cause December 8, 1883.

There was also offered a copy, admitted by complainant to be correct, of a license from complainants to Conyers Button & Co.

40 EXHIBITS.

Interlocutory Decree Against Thomas Dolan, Dated Oct. 17, 1882.

At a stated term of the United States circuit court, held in and for the southern district of New York, at the circuit court rooms, in New York city, on the 17th day of October, 1882.

Present: Hon. William J. Wallace, circuit judge.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS *against* THOMAS DOLAN.	In Equity. Docket No. 1996.

This cause having come on for final hearing at this October term of the circuit court upon the bill of complaint, the answer of defendant, and the filed papers and exhibits, and the testimony taken on the part of the complainants therein: Now, after hearing A. v. Briesen, Esq., of counsel for complainants, and John R. Bennett, Esq., of counsel for defendant, and due deliberation had, and on motion of Briesen & Betts, complainants' solicitors, it is hereby—

Ordered, adjudged, and decreed that the design letters patent of the United States issued to Abraham G. Jennings on the first day of January, 1878, as No. 10388, for a new and original design for lace purling, and the design letters patent of the United States is-

sued to Warren P. Jennings on the 12th day of February, 1878, as No. 10448, for a new and original design for fringed lace fabric, are good and valid in law; that the complainants herein are entitled to the exclusive rights in, to, and under said two design letters
41 patent and in and to the inventions and designs secured thereby; that the defendant, Thomas Dolan, has infringed upon the claims of said two design letters patent and upon the exclusive rights of the complainants thereunder.

And it is further ordered, adjudged, and decreed that the complainants do recover from the defendant, Thomas Dolan, the profits, gains, and advantages which the said defendant has derived, received, or made by reason of the infringement of the complainants' exclusive rights under said two design letters patent by any manufacture, use, or sale of lace fabrics containing said inventions and designs or either of them, and that the said complainants do also recover any and all damages they have sustained by reason of any infringement of their exclusive rights under said two design letters patent or either of them by the said defendant; and it is hereby, on consent of counsel for the respective parties, referred to Joseph M. Deuel, Esquire, one of the masters of this court, to ascertain, take, and report the quantity of lace fabrics made and the quantity sold by said defendant, Thomas Dolan, in violation of said two design letters patent or either of them, and the quantity of such lace fabrics which said defendant has on hand, and the gains, profits, and advantages derived by said defendant from and through said infringements, and to assess the damages suffered by the complainants by reason of said infringements, and to report thereon with all convenient speed.

And the defendant, Thomas Dolan, is hereby directed and required to attend before said master from time to time, as required, and to produce before him such books, papers, exhibits, statements, vouchers, and documents as he may be directed by said master to produce, and to submit to such oral or other examination as the master may direct.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued out of and under the seal of this court, enjoining and restraining the defendant, Thomas Dolan, and his servants, agents, attorneys, representatives, and workmen from directly
42 or indirectly making or causing to be made, constructing or causing to be constructed, using or causing to be used, vending or causing to be sold, delivering or causing to be delivered, working or causing to be worked, or putting into practice, operation (or use), or in anywise counterfeiting or using or imitating the said inventions and designs or either of them or any part or parts thereof, or any lace fabrics made in accordance therewith or like or similar to those which the said defendant, Thomas Dolan, has heretofore made, used, or sold, containing or embodying the inventions or designs described and claimed in said two design letters patent No. 10388 and No. 10448 or either of them in any way whatsoever.

And it is further ordered, adjudged, and decreed that the complainants do recover of the defendant, Thomas Dolan, the costs of

this suit to be taxed, and that the question of increase of damages and all further questions be reserved until the coming in of the master's report.

WM. J. WALLACE.

Consented that Joseph M. Deuel be appointed as master.
10, 19, '82.

JOHN R. BENNETT,
Proc. — Def't.
BRIESEN & BETTS,
Comp'ts' Sol'rs.

43 *Master's Report—Dolan.*

United States Circuit Court, Southern District of New York. In Equity.

A. G. JENNINGS *et al.*
against
THOMAS DOLAN.

I have attended to the duties assigned to me by the decree made and entered herein on the 19th day of October, A. D. 1882, in the discharge of which I have been attended by Mr. A. v. Briesen, of counsel for complainants, and by Mr. John R. Bennett, of counsel for defendant.

I find and report from the evidence taken before me that the defendant manufactured and disposed of four thousand two hundred ninety-five and $\frac{9}{12}$ dozen ($4{,}295\frac{9}{12}$) purl-lace nubias which infringed complainants' patent.

I further find and report that of the number so found as above twenty-two hundred and eighty-one and $\frac{5}{12}$ dozen ($2{,}281\frac{5}{12}$) were consigned to and sold by Kibbe, Chaffee, Shreve & Co., of New York city, against whom and in a suit in this court entitled A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* complainants have obtained a decree for eleven hundred and fifty-four dollars and sixty-two cents, such damage having been measured by the complainants' license fee of fifty cents per dozen.

I further find and report that, by stipulation of counsel, damages are to be assessed in this case for the whole amount of nubias manufactured and sold by the defendant, and a decree entered therefor,

44 and that if at any time prior to the satisfaction of said decree the decree against Kibbe *et al.* is paid and satisfied in whole or in part as to such damages the amount so paid shall be considered as credited upon and be deducted from the decree in this cause for the corresponding number of nubias covered by such payment.

I further find and report that complainant has an established license fee of fifty cents per dozen for the nubias made and sold as aforesaid, which must be the measure of damages herein.

I find as conclusion of law that the complainants are entitled to recover fifty cents per dozen upon the amount manufactured and

sold as aforesaid, amounting to the sum of two thousand one hundred and fifty-seven dollars and eighty-eight cents, with interest to the date of this report, amounting to one hundred and fifty-six dollars and seven cents, and amounting in the aggregate to the sum of two thousand three hundred and three dollars and ninety-five cents.

All of which is respectfully submitted.

J. M. DEUEL, *Master.*

Dated New York, January 19th, 1883.

45 *Master's Report—Kibbe.*

U. S. Circuit Court, Southern District of New York. In Equity.

A. G. JENNINGS *et al.*
against
HENRY R. KIBBE *et al.*

To the court:

Under the order of the court made and entered herein on the 24th day of February, A. D. 1882, this cause was referred to me to ascertain, take, and report the quantity of fabrics made and the quantity sold by the defendant and the quantity of such fabrics which said defendants have on hand and the gains, profits, and advantages derived by said defendants, and to assess the damages suffered by the complainants by reason of the infringement complained of.

In discharging the duties thus assigned to me a number of sessions were had, at which the complainants were represented by Mr. A. v. Briesen, of counsel, and the defendants by Mr. John R. Bennett, of counsel.

From the statements filed by the defendants and the evidence taken I find as matter of fact:

I.

That the defendants have not made fabrics infringing complainants' letters patent.

II.

46 That defendants received on consignment from Thomas Dolan & Co., of Philadelphia, Pa., twenty-seven hundred and seven dozen of the said purl-lace nubias which infringed complainants' patent, and that they sold twenty-two hundred and eighty-one and $\frac{5}{12}$ dozen and returned to said Thomas Dolan & Co. four hundred and twenty-five and $\frac{7}{12}$ dozen, and therefore said defendants had no fabrics on hand which infringed said letters patent.

III.

I further find and report that complainants had an established license fee of sixty cents for each dozen of said fabrics, less a discount of ten cents on each dozen, to wit, fifty cents on each dozen so sold by defendants.

IV.

I find as conclusion of law that the complainants are entitled to fifty cents upon each dozen of said purl-lace nubias sold as aforesaid by the defendants, amounting to the sum of eleven hundred and four dollars and twenty cents, with interest thereon to the date of this report, amounting to fifty dollars and forty-two cents, and amounting in the aggregate to eleven hundred fifty-four dollars and sixty-two cents.

All of which is respectfully submitted.

JOSEPH M. DEUEL, *Master.*

N. Y., Oct. 5th, 1882.

47 *Marriott & Crine License.*

Whereas Abraham G. Jennings and Warren P. Jennings, of Brooklyn, Kings county, New York, parties of the first part, are the owners of the following-mentioned letters patent of the United States, viz:

Design letters patent No. 10388, granted January 1st, 1878, for lace purling; and

Design letters patent No. 10448, granted February 12th, 1878, for fringed lace fabrics; and

Letters patent No. 218,032 for an improvement in lace purling, granted July 29th, 1879;

And whereas Mr. William Marriott, of Stoughton, Mass., and Henry Crine, of Boston, Mass., parties of the second part, are desirous of acquiring the right to make and sell certain kinds of nubias and scarfs of purl-lace fabrics under said three letters patent:

Now, therefore, this agreement witnesseth: That, for and in consideration of the covenants hereinafter contained to be well, truly, and faithfully kept and performed by the parties of the second part, the parties of the first part have granted, and hereby do grant, unto the parties of the second part the right and privilege to make, under said three letters patent and during the terms thereof, nubias and scarfs of purl-lace fabrics of the single and double pillar threads, fringed on the ends only, and none other, and to sell those thus made.

The parties of the first part hereby grant unto the parties of the second part the right to make such goods on warp-lace machines, not exceeding three now in use and possession of William Marriott and in quantity not exceeding eight hundred (800) dozen, up to the 1st day of January, 1881, without the written consent of the parties of the first part.

The parties of the second part promise, covenant, and agree, as a condition of this license, to pay to the parties of the first part, as a royalty or patent fee, the sum of fifty (50) cents for each and every dozen of such nubias or scarfs made under said three letters patent, commencing from the 1st day of April, 1880. Payments

48 of royalty are to be made by the parties of the second part to the parties of the first part on the first day of each and

every month or within five days thereafter during the continuance of this agreement on the amount or quantity of said patented goods made during the month next preceding (*sic*) such date of payment.

All payments of royalty are to be accompanied by the sworn statement of the parties of the second part specifying the amount and character of such goods made and sold by them under said three letters patent.

The parties of the second part further promise, covenant, and agree to keep true and correct books of account in which shall be entered the quantity and character of such goods made and weight of yarn used by the parties of the second part under said three letters patent and the quantity and character of such goods sold.

Such books of account are to be open at all reasonable times to the inspection of the parties of the first part or their duly authorized agent.

All payments of royalty made by the parties of the second part to the parties of the first part under the agreement are to be made at the place of business of the parties of the first part in New York city, New York.

The parties of the second part further promise, covenant, and agree to mark all the goods and the boxes and packages containing such goods so made and sold under said three letters patent "patented January 1st, 1878, February 12th, 1878, and July 29th, 1879," as required by law.

The parties of the first part, in consideration of the faithful performance of this agreement, further promise, covenant, and agree to release the parties of the second part from all claims for damages against said parties of the second part for past infringements prior or before the 1st day of April, 1880, of the said three letters patent or either of them.

If at any time the parties of the second part shall fail to keep or perform any of the conditions or covenants contained in this
49 agreement, then and in that case this agreement shall immediately become null and void without notice.

But the parties of the second part shall not be relieved thereby from any payments of royalty already due at such time or which may become due at such time or which may become due thereafter to the parties of the first part, or from the performance of any other acts under this agreement which should have been done before such time.

In testimony whereof the parties hereto have hereunto set their hands and affixed their seals this the 24th day of August, 1880.

A. G. JENNINGS.
WARREN P. JENNINGS.
WM. MARRIOTT.
HENRY CRINE.

In presence of—
THOS. STRINGER.
In presence of—
——.

50 *Conyers Button License.*

Whereas Abraham G. Jennings and Warren P. Jennings, of Brooklyn, Kings county, New York, parties of the first part, are the owners of the following-mentioned letters patent of the United States, viz:

Design letters patent No. 10388, granted January 1st, 1878, for lace purling, and design letters patent No. 10448, granted February 12, 1878, for fringed lace fabrics, and letters patent No. 218,032, granted July 29, 1879, for an improvement in lace purling;

And whereas Conyers Button & Co., of Germantown, Philadelphia, Pa., parties of the second part, are desirous of acquiring the right to make and sell certain kinds of nubias, scarfs, shawls, and other articles of purl-lace fabrics under said three letters patent;

And whereas the parties of the second part did enter into and make an agreement with the parties of the first part, bearing date October 14, 1879, to manufacture nubias under the first two named design patents Nos. 10388 and 10448:

Now, therefore, this further agreement, in confirmation, enlargement, and amendment of the one of October, 1879, in its rights and privileges and in place of it in its terms of royalty to be, paid witnesseth—

That, for and in consideration of the covenants hereinafter continued to be well and truly and faithfully kept and performed by the parties of the second part, the parties of the first part have granted and hereby do grant unto the parties of the second part the right and privilege to make under said three letters patent and during the terms thereof nubias, scarfs, shawls, and other articles of purl-lace fabrics of the single or double pillar thread, fringed or otherwise, of cotton, wool, worsted, and of silk not to exceed one-half of the fabric, woven or knitted—that is to say, alternate threads of wool, worsted, or silk, and to sell the same.

The parties of the first part hereby grant unto the parties of the second part the right to make such goods on the double-
51 ribbed machines or the warp machines or otherwise as the said parties of the second part may elect.

The parties of the second part promise, covenant, and agree as a condition of this license to pay to the parties of the first part as a royalty or patent fee the sum of twelve and a half (12½) cents per pound on all such articles made of either cotton, wool, or worsted and fourteen (14) cents per pound on all such articles partly made of silk and made by them under said three letters patent or either of them, dating and commencing from the first day of January, 1880.

True and correct returns of the quantities and weights of goods made by the parties of the second part are to be made to the parties of the first part on or before the 10th day of each and every month during the continuance of this agreement, and payment for the same to be made at the expiration of two (2) months from the date of each return, with a rebate of two and a half (2½) cents per pound after January 1st, 1880, to be accompanied by the statement of the parties of the second part, verified by their chief book-keeper, speci-

fying the quantities and average weight per dozen of each class of goods made by them under said three letters patent or either of them. The parties of the second part further promise, covenant, and agree to keep true and correct books of account, in which shall be entered the quantities and character of such goods made by the parties of the second part, and the weight thereof, under said three letters patent, and the quantity and character of such goods sold. Such books of account are to be open at all reasonable times to the inspection of the parties of the first part or their duly authorized agent.

All payments of royalty made by the parties of the second part to the parties of the first part under this agreement are to be made at the place of business of the parties of the first part, in New York city, New York.

The parties of the second part further promise, covenant, and agree to mark all the boxes or cartons containing such goods
52 so made and sold under said three letters patent "Patented January 1, 1878, February 12, 1878, July 29, 1879," as required by law.

The parties of the first part, in consideration of the faithful performance of this agreement, further promise, covenant, and agree to release the parties of the second part and their agents from all claims for damages against them for past infringements of the said three letters patent or either of them previous to January 1, 1880.

The parties of the first part hereby covenant and agree that in case they license any other party or parties on any less payment per dozen or per pound or on any more favorable terms than herein contained, then and in that case the parties of the second part shall be entitled to as small a payment as royalty and as favorable terms as any so licensed.

If at any time the parties of the second part shall fail to keep or perform any of the conditions or covenants contained in this agreement, then and in that case—reasonable notice being given by the party of the first part—unless complied with, this agreement shall, at the option of the party of the first part, become null and void; but the parties of the second part shall not be relieved thereby from any payments of royalty already due at such time or which may become due thereafter to the parties of the first part or from the performance of any other acts under this agreement which should have been done before such time.

In testimony whereof the parties have hereunto set their hands and affixed their seals this 25th day of May, 1880.

A. G. JENNINGS. [SEAL.]
WARREN P. JENNINGS. [SEAL.]
CONYERS BUTTON & CO. [SEAL.]

In presence of—
THOS. STRINGER.
M. L. FINCKEL.

53 Compl'ts' counsel objects to the reception of said exhibits and each of them on the ground that the proceedings in said prior suits, which were decided in 1882, related to two design patents, to wit, No. 10388 and No. 10448, while the present suits relate to an entirely different patent, to wit, mechanical patent No. 218,032, and as therefore immaterial and incompetent.

Def'ts' counsel states that the foregoing papers are offered in evidence for the purpose of showing the value of patents Nos. 10388 and 10448 placed thereon by the compl'ts in the license offered by them in evidence September 29th, 1885.

Objection continued, as no foundation has been laid.

Def'ts' counsel offers in evidence a copy of a license issued
54 by the compl'ts herein to Conyers Button & Co., of Philadelphia, Pa., Oct. 14, 1879.

Compl'ts' counsel admits the genuineness of the license, the correctness of the copy, and that the royalty therein stated was paid to compl'ts, but objects to the introduction of the same as incompetent and without foundation.

Def'ts rest.

NOVEMBER 30TH, 1885.

Present: A. v. Briesen, for compl't, and J. R. Bennett, for def'ts. (Heard counsel on final argument.)

55 *Master's Report.*

United States Circuit Court, Southern District of New York.

A. G. & W. P. JENNINGS
against
THOMAS DOLAN. } In Equity.

To the judges of the circuit court of the United States for the southern district of New York:

Pursuant to an order of the court dated January 19th, 1885, whereby, among other things, it was referred to the undersigned, as master, to ascertain, take, and state the number of lace fabrics made, used, and sold by the defendant or which he has on hand in infringement of the claims of letters patent No. 218,032, and the gains, profits, savings, and advantages derived by said defendant from and through said infringements, and to assess and report the damages thereby suffered by the complainants, I, Timothy Griffith, the master mentioned in said order, hereby report—

That I have been attended by A. v. Briesen, Esq., of counsel for the complainants, and by John R. Bennett, Esq., of counsel for the defendant, and that I have taken and carefully considered all the evidence adduced before me; that from such evidence I find and report that the defendant has made and sold $3{,}075\frac{9}{12}$ dozen of lace fabrics called "nubias" in infringement of the claims of complainants' letters patent No. 218,032; that said patent by a special claim covers

the fringe of the infringing lace fabric or nubias made with
56 the double pillar and by another special claim covers the body of the double-pillar fabric.

I further find and report that complainants have an established license fee of fifty cents per dozen lace fabrics, or nubias, so called, manufactured under said letters patent No. 218,032, with fringe at the ends only.

I find, as conclusion of law, that the complainants are entitled to recover fifty cents per dozen upon the amount manufactured and sold as aforesaid, amounting to the sum of one thousand five hundred and thirty-seven $\frac{88}{100}$ dollars ($1,537.88), and said sum is hereby assessed as the amount due the complainants as damages herein, together with interest thereon.

All of which is respectfully submitted, together with the evidence taken before me.

Dated January 5th, 1886.

Counsel for the respective parties were notified and on the 9th day of January, 1886, appeared before me, and counsel for defendant deferred his objections to my draft report until the same shall come before the court.

I hereby sign the foregoing as my final report.

Dated January 28th, 1886.

(Signed) TIMOTHY GRIFFITH, *Master.*

(Endorsed :) U. S. circuit court, southern dist. of N. Y. A. G. Jennings & *al. vs.* Thomas Dolan. Master's report. (File-mark :) U. S. circuit court. Filed Jan. 28, 1886. Timothy Griffith, clerk.

57 Circuit Court of the United States, Southern District of New York. In Equity.

A. G. & W. P. JENNINGS
against
THOMAS DOLAN.

Exceptions to Master's Report.

In the Circuit Court of the United States in and for the Southern District of New York. In Equity.

A. G. & W. P. JENNINGS
against
THOMAS DOLAN.
} On Exceptions to the Report of the Master.

58 To the honorable the judges of the circuit court of the United States in and for the southern district of New York :

And now comes the defendant in the above-entitled cause, by John R. Bennett, his solicitor and counsel, and takes exception to the report of the master filed herein January 28th, 1886 :

1. For that the master has found and reported "that comp lainants have an established license fee of fifty cents (50 cts.) per dozen lace fabrics, or nubias, so called, manufactured under said letters patent No. 213,032, with fringe at the ends only."

2. For that the said master has found and reported: "I find as a conclusion of law that the complainants are entitled to recover fifty cents (50 cts.) per dozen upon the amount manufactured and sold, amounting to the sum of one thousand five hundred and thirty-seven $\frac{88}{100}$ ($1,537.88) dollars, and said sum is assessed as the amount due the complainants as damages herein, together with interest thereon."

Whereas the said master should have found and reported:

1. That the complainants had no established license fee under the said letters patent No. 218,032, either for the whole or any part thereof.

2. That as a conclusion of law the complainants are entitled to recover from the defendant herein nominal damages only.

Wherefore the defendant excepts to the said report of the master and prays the judgment of this honorable court thereon.

New York, February 27th, 1886.

(Endorsed:) U. S. circuit court, S. D. of N. Y. In equity. A. G. & W. P. Jennings *vs.* Thomas Dolan. Exceptions to the master's report. John R. Bennett, counsel for def'ts, 237 B'dway, N. Y. city. (File-mark:) U. S. circuit court. Filed Mar. 1, 1886. Timothy Griffith, clerk.

59 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the second day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

Present: The Honorable Hoyt H. Wheeler, judge.

ABRAHAM G. JENNINGS & *al.*
vs.
HENRY R. KIBBE & *al.*

SAME
vs.
THOMAS DOLAN.

The above causes coming on for argument upon exceptions filed to the master's report—

Mr. A. v. Briesen is heard in behalf of complainants and in favor of confirmation of report.

Mr. John R. Bennett is heard in behalf of defendants and in support of exceptions.

C. A. V.

60 Circuit Court of the United States, Southern District of New York.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
THOMAS DOLAN.
} In Equity. No. 2196.

The master's report, made in pursuance of the interlocutory decree in this cause, having been duly filed on the 28th day of January, 1886, which said master's report finds fifteen hundred and thirty-seven dollars and eighty-eight cents ($1,537.88) as recoverable damages, and the defendant having filed exceptions thereto on the first day of March, 1886, and such exceptions having came on to be heard by this court, and Mr. John R. Bennett having been heard in support of such exceptions and Mr. Arthur v. Briesen having been heard in opposition thereto—

Now, therefore, upon consideration thereof and on motion of Briesen & Steele, solicitors for the complainants, it is ordered, adjudged, and decreed that the said master's report be, and the
61 same hereby is, in all things confirmed, and that the complainants, Abraham G. Jennings and Warren P. Jennings, do recover of the defendant, Thomas Dolan, the sum of fifteen hundred and thirty-seven dollars and eighty-eight cents ($1,537.88), with interest thereon from January 19th, 1885, the date of entering the interlocutory decree herein, to the date of entering this decree, together with the sum of twenty-four dollars and twenty-two cents ($24.22), taxable costs on the reference before the master, and the sum of ten dollars and forty-five cents ($10.45), fees of the clerk on enrolling this decree, and that said defendant pay said sums to the complainants, and that the complainants have execution and proper process of this court for the collection thereof; and it is further ordered, adjudged, and decreed that should the defendants in the suit of these complainants against Henry R. Kibbe *et al.*, No. 2216, now pending in this court, pay to these complainants the amount of the judgment in that case, then such payment shall also operate as a partial satisfaction of the judgment in this case—that is, it
62 shall satisfy this judgment to the extent of thirteen hundred and ninety-two dollars and eighty-eight cents.

(S'g'd) HOYT H. WHEELER.

(Endorsed:) Circuit court of the U. S., southern district of New York. A. G. Jennings & *al. vs.* Thomas Dolan. In equity. Final decree. Briesen & Steele, sol'rs for compl'ts, 229 B'dway, N. Y. city.

(File-mark:) U. S. circuit court. Filed Feb. 12, 1887. Timothy Griffith, clerk.

63 Circuit Court of the United States, Southern District of New York.

ABRAHAM G. JENNINGS *et al.*
vs.
THOMAS DOLAN. } In Equity.

It is hereby stipulated that the foregoing may constitute the record to be sent by the clerk of this court to the clerk of the Supreme Court of the United States on the appeal to said Supreme Court in the above-entitled cause; and it is further stipulated that the proofs in the suit of A. G. Jennings & *al. vs.* Henry R. Kibbe & *al.* may also be considered the proofs in the above-entitled cause, and that the same may be referred to and used on the hearing on appeal in the Supreme Court of the United States with the same force and effect as if taken in the above-entitled cause.

New York, Oct. 11, 1887.

(Signed) JOHN R. BENNETT,
Counsel for Def't.

(Signed) A. v. BRIESEN,
Counsel for Appellees.

(Endorsed:) U. S. circuit court. Filed Oct. 12, 1887. Timothy Griffith, clerk.

64 United States Circuit Court, Southern District of N. Y., Second Circuit. In Equity.

ABRAHAM G. JENNINGS, Survivor of Abraham G. Jennings and Warren P. Jennings,
vs.
THOMAS DOLAN. } No. 2196.

To the honorable the Supreme Court of the United States:

The appeal of the above-named defendant and appellant respectfully showeth:

That the above-named complainants and appellees filed their bill of complaint in the circuit court of the United States for the southern district of New York against the above-named defendant and appellant, reciting the grant and issue of design letters patent of the United States No. 10448, granted Warren P. Jennings, February 12, 1878, for a new and original design for "lace fabrie," and letters patent No. 218,032, dated July 29, 1879, granted to Abraham G. Jennings and Warren P. Jennings for an improvement in
65 "lace purling," and charging that the said defendant and appellant had infringed said design letters patent and said letters patent and praying for a decree, an injunction, and account.

That this defendant and appellant appeared and filed answer denying the allegations of the said bill of complaint, and that he infringed either said design letters patent No. 10448 or said letters patent, or intended so to do.

That thereafter this cause was heard on the pleadings and proofs

taken therein by his honor Hoyt H. Wheeler, district judge, who afterwards, and on or about the 10th day of January, A. D. 1885, filed an opinion that said defendant and appellant had not infringed said design letters patent, but sustained the validity of said letters patent No. 218,032, and finding that said defendant and appellant had infringed the same and ordering a decree for an injunction and account to be entered in favor of complainants and appellees without costs, except on the account.

That in accordance therewith an interlocutory decree was
66 entered ordering an injunction to issue restraining said defendant and appellant from further infringing said letters patent No. 218,032 and referring this cause to a master to take an account of the gains, profits, and advantages derived by the said defendant and appellant from and through said infringements, and to assess the damages suffered by complainants by reason of said infringement without costs, except on the account.

That the master to whom this cause was so referred, having taken proofs and heard the parties on the matter referred to, made his report thereon, to which exceptions were filed by the said defendant and appellant, and on or about the — day of ——, 1887, a final decree was entered in this cause confirming the report of the master, and wherein it was ordered that the complainants and appellees herein do recover from the said defendant and appellant the sum of fifteen hundred and thirty-seven dollars and eighty-eight cents ($1,537.88), and that the complainants and appellees have due execution and proper process for the collection thereof.

67 Wherefore this defendant appeals from the whole of the decree of the said circuit court of the United States, and — the pleadings, proofs, exhibits, and proceedings in said cause may be forthwith sent to the Supreme Court of the United States, and that said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed and a decree made dismissing said bill of complaint, with costs, or such other decree as to the said Supreme Court shall seem just.

(S'g'd) JOHN R. BENNETT,
Counsel for Defendant and Appellant.

The appeal is allowed as prayed for, citation to issue, bond having been approved.

(S'g'd) HOYT H. WHEELER.

(Endorsed:) U. S. circ't court, so. dist. of N. Y. In Equity. A. G. Jennings *et al. vs.* Thomas Dolan. Copy served March 24, '87. (S'g'd) Briesen & Steele, compl'ts' sol'rs. (File-mark:) U. S. circuit court. Filed Mar. 25, 1887. Timothy Griffith, clerk.

68 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

A. G. JENNINGS, Surviving Complainant in A. G. Jennings and W. P. Jennings,
vs
THOMAS DOLAN.

No. 2196. Bond for Damages and Costs.

Know all men by these presents that we, Thomas Dolan, of Philadelphia, and Edward J. Chaffee and Robert E. Lester, of New York city, are held and firmly bound unto the above-named complainants in the sum of thirty-five hundred dollars, to be paid to the said complainants; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the third day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas the above-named Thomas Dolan has prosecuted an appeal to the Supreme Court of the United States to reverse the decree and judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Thomas Dolan shall prosecute his said appeal to effect and answer all damages and costs that may be decreed against him and discharge the same in full, then this obligation shall be void; ortherwise the same shall be and remain in full force and virtue.

THOMAS DOLAN. [L. S.]
EDW'D J. CHAFFEE. [L. S.]
ROBERT E. LESTER. [L. S.]

Sealed and delivered and taken and acknowledged this 3rd day of March, 1887, before *me*—

(S'g'd) JOHN R. BENNETT.
(S'g'd) GEO. H. SONNEBORN.

69 [Endorsed:] No. 2196. U. S. circuit court. A. G. Jennings *et al. vs.* Thomas Dolan. Bond for costs on appeal. The within bond approved as to form, amount, and sufficiency of the sureties. Dated M'ch 10, 1887. (S'g'd) Hoyt H. Wheeler, judge.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

Edward J. Chaffee and Robert E. Lester, each being duly sworn, each deposes and says for himself that he is worth the sum of thirty-five hundred dollars over and above all his just debts and liabilities.

(S'g'd) EDW'D J. CHAFFEE.
(S'g'd) ROBERT E. LESTER.

Sworn to this fourth day of March, A. D. 1887, before me—

(S'g'd) GEORGE H. SONNEBORN,
[NOTARIAL SEAL.] *Notary Public, N. Y. Co.*

70 By the honorable the judge of the circuit court of the United States in and for the second circuit and southern district of New York to Abraham G. Jennings, surviving complainant, &c.:

Whereas Thomas Dolan has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the second circuit and southern district of New York in favor of A. G. Jennings and W. P. Jennings and has filed the security required by law, you are are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1887, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of March, A. D. one thousand eight hundred and eighty-seven.

(S'g'd) HOYT H. WHEELER, *Judge.*

71 (Endorsed:) U. S. circuit court, so. dist. of N. Y. In equity. A. G. Jennings *et al. vs.* Thomas Dolan. Citation. Copy served March 24, '87. (S'g'd) Briesen & Steele, compl'ts' sol'rs. (File-mark:) U. S. circuit court. Filed Mar. 25, 1887. Timothy Griffith, clerk.

72 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one (1) to seventy-one (71), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Thomas Dolan against Abraham G. Jennings and Warren P. Jennings as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twelfth day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the said United States the one hundred and twelfth.

Seal of U. S. Circuit Court, South. Dist. New York.

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 265. Thomas Dolan, appellant, *vs.* Abraham G. Jennings. Filed October 20, 1887.